



POLICE DEPARTMENT

January 11, 2007

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Detective Gerard Rall
Tax Registry No. 898343
84 Precinct Detective Squad
Disciplinary Case No. 81581/06

Detective James Murray
Tax Registry No. 904653
63 Precinct Detective Squad
Disciplinary Case No. 81582/06

The above-named members of the Department appeared before me on
October 11, 2006, charged with the following:

Disciplinary Case No. 81581/06

1. Said Detective Gerard Rall, assigned to Queens North Vice Enforcement Division, while on duty, on or about and between December 29 and December 30, 2004, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he patronized a licensed premise while on overtime without authorization. (As Amended)

P.G. 203-10, Page 1 Paragraph 5 – PROHIBITED CONDUCT

2. Said Detective Gerard Rall, assigned to Queens North Vice Enforcement Division, while on duty, on or about and between December 29 and December 30, 2004, wrongfully caused false entries to be made in Department records to conceal the fact that he had patronized a licensed premise while on overtime without authorization. (As Amended)

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY
GENERAL REGULATIONS

Disciplinary Case No. 81582/06

1. Said Detective James Murray, assigned to Queens North Vice Enforcement Division, while on duty, on or about and between December 29 and December 30, 2004, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he patronized a licensed premise while on overtime without authorization. (As Amended)

P.G. 203-10, Page 1 Paragraph 5 – PROHIBITED CONDUCT

2. Said Detective James Murray, assigned to Queens North Vice Enforcement Division, while on duty, on or about and between December 29 and December 30, 2004, wrongfully caused false entries to be made in Department records to conceal the fact that he had patronized a licensed premise while on overtime without authorization. (As Amended)

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY
GENERAL REGULATIONS

The Department was represented by Yadhira Gonzalez-Taylor, Esq., Department Advocate's Office, and the Respondents were represented by Peter Brill, Esq.

The Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 81581/06

The Respondent is found Not Guilty.

Disciplinary Case No. 81582/06

The Respondent is found Not Guilty.

EVIDENCE

The Department's Case

The Department called Captain Michael Ameri as its sole witness.

Captain Michael Ameri

Ameri, a 14-year member of the Department, is currently assigned to Brooklyn North Narcotics. In 2004, he was the Commanding Officer of the Queens Vice Enforcement Squad ("Queens Vice"). Although the Respondents were scheduled to work from 12:45 p.m. until 9:00 p.m. on December 29, 2004, they were still working when Ameri began his tour at 11:00 p.m. that day. Ameri testified that he observed the Respondents in the command at approximately 11:40 or 11:45 p.m. preparing to transport prisoners to Central Booking. Ameri exited the command before the Respondents left for Central Booking. According to the Command Log, the Respondents left for Central Booking at 11:45 p.m. [Department's Exhibit (DX) 1 is a copy of the Queens Vice Roll Call, and DX 2 is a copy of the Queens Vice Command Log for December 29, 2004.]

Ameri testified that at approximately 12:45 a.m., he observed an unmarked Department vehicle parked across the street from Kelly's Bar ("Kelly's"), which is located at 82 Street and Elliot Avenue in Queens. Ameri recorded the vehicle's license plate number and looked it up in the Vehicle Roster upon his return to the command. [DX 3 is a copy of the Queens Vice Vehicle Roster for that day.] Ameri learned that the car was assigned to Sergeant Peter Auerbach and his team. While Ameri was in the command looking at the Vehicle Roster, he observed a Police Officer Walter Harkins sign out on the Roll Call. According to the Roll Call, Harkins signed out at 1:00 a.m. After

identifying the vehicle, Ameri returned to Kelly's. Ameri testified that he observed the Respondents exit Kelly's at 1:26 a.m., and he instructed the Respondents to follow him back to the command. In Ameri's office, the Respondents explained to Ameri that they were taking their meal at Kelly's, that it was their first opportunity to eat all day, and that they were in Kelly's for just a short while. After speaking with the Respondents, Ameri instructed them to sign out. Ameri stated that the Respondents signed out at approximately 2:45 a.m., but they entered 1:00 a.m. as their sign-out time on the Roll Call.

Ameri testified that "contractual guidelines" prohibit uniformed members of the service from taking meal on overtime. A uniformed member of the service who needs to take meal while on overtime can, however, ask a supervisor for permission. Several weeks or months before the incident, Ameri spoke with the members of his command about diligently following the rules relating to overtime. Ameri indicated to them that they were not allowed to take meal while on overtime. According to Ameri, he specifically remembered the Respondents being present as he discussed overtime regulations, and he also spoke to Respondent Murray personally about the subject because Respondent Murray was a union representative.

On cross-examination, Ameri testified that December 29, 2004 was Detective Jeffrey Antonsen's birthday, and he heard people in the command talking that day about going to Kelly's to celebrate. Kelly's is both a bar and a restaurant. It is not a designated off-limits location.

On the day of the incident, Ameri was driving his assigned take-home vehicle. At the time, he had been assigned the car for approximately two months. Ameri did not

know who was responsible for setting the clock in the car, and he did not recall ever setting the clock himself. While driving, Ameri regularly listens to news radio and checks the time on the car's clock against the time broadcasted on the radio. He did not, however, specifically recall checking the time on the car's clock on the day in question. Ameri testified that he did not know who set the clock near the roll-call area in the command, and he did not know when that clock was last checked for accuracy. Ameri did not physically look at the clock when Harkins signed out.

When Ameri initially left the command that night, he went to get a cup of coffee at a Dunkin Donuts located a few blocks away. He did not recall whether or not the Dunkin Donuts was crowded. He then went to get his car washed at a carwash located a couple of miles away from both the command and Kelly's. It was after leaving the carwash that Ameri observed the Department car parked in front of Kelly's. Without delay, Ameri drove to the command, spent five or ten minutes checking the Vehicle Roster, and then returned directly to Kelly's. Depending on traffic conditions, it takes five to ten minutes to drive from Kelly's to the command. Ameri testified that he was not too focused on the exact timing of his whereabouts. He was more concerned with the fact that members of the service were in a bar on overtime. The Respondents followed Ameri back to the command, and Ameri waited in his office for them to arrive. Ameri never physically saw the Respondents sign out.

Ameri testified that when he spoke with the members of the command about overtime regulations, he did not specifically state, "Don't take a meal on overtime." Ameri stated that he does not know which contract, in particular, deals with members of the service taking meal while on overtime. He does not believe that there is mention of

the subject in the Patrol Guide. Ameri did not prepare any notes on the incident until before his Official Department Interview, which took place on March 23, 2005. Ameri did not preserve any of his notes.

The Respondents' Case

The Respondents called Detective Jeffrey Antonsen, Sergeant Peter Auerbach, and Detective Franklin Garcia as witnesses and testified in their own behalf.

Detective Jeffrey Antonsen

Antonsen, a 16-year member of the Department currently assigned to the Brooklyn North Vice Enforcement Squad, was assigned to Queens Vice in 2004. On December 29, 2004, he worked from 12:45 p.m. until 12:00 a.m. Antonsen testified that the policy in Queens Vice was for members of the service to take meal whenever they had a chance. He further testified that there were no specific policies regarding the taking of meal while on overtime. From what he understood, members of the service were permitted to take meal while on overtime. He explained that if he and his coworkers did not have time to eat during their regular tour, they would grab something to eat while on overtime. They would not, however, take a full meal hour while on overtime. According to Antonsen, he was never specifically told by any supervisor not to take meal while on overtime or that it was necessary to get permission before taking meal.

Antonsen testified that it was his birthday on December 29, 2006, and he told the members of his command that day that he would be celebrating at Kelly's after work. He stated that at 1:00 a.m., it would take approximately five minutes to drive to Kelly's from

the command. On the day in question, Antonsen was at Kelly's from approximately 12:10 a.m. until 2:00 a.m. Antonsen testified that he observed the Respondents arrive at Kelly's at approximately 12:30 a.m. The Respondents each had a beer, and they shared a plate of chicken wings. According to Antonsen, the Respondents spent approximately 20 minutes at Kelly's, leaving at 12:50 or 12:55 a.m. At some point between 1:20 and 1:30 a.m., Respondent Murray returned to Kelly's and told Antonsen that he had just been reprimanded by Ameri.

On cross-examination, Antonsen testified that he is good friends with Respondent Murray. He stated that he did not remember looking at a clock or at his watch when the Respondents arrived at Kelly's. Antonsen did, however, look at a clock when the Respondents exited because Respondent Murray told him that he would come back later and he (Antonsen) did not plan on being at Kelly's much longer. Antonsen looked at the clock again when Respondent Murray returned. When Antonsen arrived at Kelly's, a Lieutenant Loeffel was there.

On redirect examination, Antonsen testified that Loeffel did not work in Queens Vice. Antonsen did not know if Loeffel was on duty while he was at Kelly's on the night in question.

Sergeant Peter Auerbach

Auerbach, a 13-year member of the Department, is currently assigned to the Manhattan South Vice Enforcement Squad. He has been responsible for supervising detectives since his promotion to the rank of sergeant in 1999. He testified that he is not aware of any policy that states that detectives cannot take meal while working overtime

or that they need to get permission from a supervisor before taking meal on overtime. He explained that, in general, meal times are not assigned to detectives. Instead, detectives take meal whenever they get the chance. According to Auerbach, it is not uncommon for a detective to grab a bite to eat while on overtime. On December 29, 2004, Auerbach worked from 12:25 p.m. until 12:30 a.m.

On cross-examination, Auerbach testified that he used to be the Respondents' direct supervisor in Queens Vice. He is friends with Respondent Murray.

On redirect-examination, Auerbach testified that he used to review the Respondents' Daily Activity Reports ("DAR"), and he never found overtime discrepancies.

Upon questioning by the Court, Auerbach testified that he worked in Queens Vice for approximately two-and-a-half years, and it was very rare that detectives in the command had the opportunity to take a full hour for meal.

Detective Franklin Garcia

Garcia, an eight-year member of the Department, is currently assigned to the Firearms Investigation Unit. In December 2004, he worked with the Respondents in Queens Vice. On December 29, 2004, he worked from 12:45 p.m. until 1:00 a.m. He testified that while he signed out, he might have seen Harkins in the vicinity of the Roll Call. After signing out, Garcia went to Kelly's. It took him approximately five minutes to drive to Kelly's from the command. Garcia stated that when he arrived at Kelly's, the Respondents were not there. According to Garcia, Respondent Murray arrived at Kelly's

approximately 15 minutes later and discussed having just been reprimanded by Ameri.

Respondent Rall was not with him.

Garcia testified that he is not aware of any policy that states that detectives cannot take meal while working overtime or that they need to get permission from a supervisor before taking meal on overtime. Garcia, himself, has taken meal on overtime. He explained that detectives eat whenever they have time, whether they are on their regular tour or on overtime.

On cross-examination, Garcia testified that while he worked with the Respondents in Queens Vice, they would sometimes go out together after work.

Respondent Detective Gerard Rall

Respondent Rall, a 16-year member of the Department, is currently assigned to the 84 Precinct Detective Squad. He has never before been the subject of Departmental charges. He testified that he has held the rank of detective since 2001, and he has never heard of a rule indicating that detectives cannot take meal while performing overtime or need to get permission from a supervisor before taking meal on overtime. It is his practice to take meal on overtime if he did not have the opportunity to eat during the course of his regular tour. When taking meal on overtime, he quickly grabs a bite to eat instead of taking a full hour break. Respondent Rall testified that he did not recall attending a meeting wherein Ameri discussed overtime regulations.

On December 29, 2004, Respondent Rall was scheduled to work until 9:00 p.m., but Auerbach authorized the Respondents to work overtime for the purpose of transporting four prisoners to Central Booking. The Respondents drove directly from the

command to Central Booking, where they spent a half hour. They then drove to Kelly's for meal. It was their first opportunity that day to take meal. The Respondents had a beer each and a plate of chicken wings. They spent 15 to 20 minutes at Kelly's. During that period, Respondent Rall saw Antonsen and Loeffel. [Respondent's Exhibit (RX) A is a copy of Respondent Rall's DAR for December 29, 2004. According to the DAR, the Respondents left the command at 11:45 p.m., were at Central Booking from 12:00 a.m. until 12:30 a.m., and were on meal at Kelly's from 12:40 a.m. until 12:55 a.m.]

Respondent Rall testified that when he and Respondent Murray left Kelly's, they were stopped by Ameri. Respondent Rall stated that it was 12:56 or 12:57 a.m. at the time, and they were on their way back to the command. Ameri instructed the Respondents to follow him. According to Respondent Rall, he and Respondent Murray signed out on the Roll Call as soon as they entered the command. Respondent Rall looked at the clock on the wall and saw that it was 1:00 a.m. The Respondents then reported to Ameri's office. The Respondents informed Ameri that they had stopped at Kelly's for 15 or 20 minutes to eat. On the day in question, Respondent Rall entered 1:00 a.m. as his end of tour on the Roll Call, his DAR, and his movement slip. Respondent Rall explained that had he worked until 1:30 or 2:00 a.m., he would have been shortchanging himself out of overtime pay by signing out at 1:00 a.m.

On cross-examination, Respondent Rall reiterated that it took a half hour for him and Respondent Murray to process their four prisoners in Central Booking. He testified that he did not prepare his DAR for December 29, 2004 during his tour of duty that day. He explained that DARs must normally be completed within three days of the date of occurrence.

Respondent Detective James Murray

Respondent Murray, a 13-year member of the Department, is currently assigned to the 63 Precinct Detective Squad. He has never before been the subject of Departmental charges. While he worked at Queens Vice, he was the Detectives Endowment Association delegate for the command. Respondent Murray testified that Ameri did not seem to like union delegates, and his relationship with Ameri "wasn't good, wasn't bad." Respondent Murray has held the rank of detective since 1999, and he worked in Queens Vice for approximately six years. He testified that during his time as a detective, he has never heard of a rule indicating that detectives cannot take meal while performing overtime or need to get permission from a supervisor before taking meal on overtime. He stated that it is his practice, while on duty, to eat whenever he has the chance. Most often, meals consist of grabbing a quick bite to eat instead of sitting down for a full hour.

Respondent Murray testified that on December 29, 2004, he did not take meal during his regular tour. His first opportunity to eat that day came after he and Respondent Rall dropped off their prisoners at Central Booking. According to Respondent Murray's DAR [RX B], the Respondents were at Central Booking from 12:00 a.m. until 12:30 a.m. Respondent Murray stated that the entries on his DAR were based on his personal recollection and there was no reason to doubt his accuracy. The Respondents drove directly from Central Booking to Kelly's, arriving at Kelly's at 12:40 a.m. They were in Kelly's for 15 minutes. When they left Kelly's at 12:55 a.m., they were stopped by Ameri. Ameri instructed the Respondents to follow him back to the command. According to Respondent Murray, he and Respondent Rall signed out on the

Roll Call as soon as they got to the command. They then went to Ameri's office.

Respondent Murray testified that the 1:00 a.m. sign-out time that he entered on the Roll Call and on his DAR was accurate. Respondent Murray would have received more overtime pay had he signed out later.

On cross-examination, Respondent Murray testified that he never had a conversation with Ameri specifically about taking meal while on overtime. He stated that he probably prepared his DAR for December 29, 2004 on the next day. He explained that normally one detective on a team will prepare a DAR that everybody else on the team will copy.

FINDINGS AND ANALYSIS

Disciplinary Case Nos. 81581/06 & 81582/06

Specification No. 1

The Respondents stand charged with engaging in conduct prejudicial to the good order, efficiency and discipline of the Department by patronizing a licensed premise while on overtime without authorization. It went undisputed at trial that the Respondents took their meal at Kelly's while on overtime. Kelly's was never designated an off-limits location, and the Department could not indicate a provision in the Patrol Guide or any other Departmental guideline that prohibits members of the service from taking meal while on overtime (with or without the authorization of a supervisor). Ameri claimed that he indicated to the members of his command prior to the incident that they were not allowed to take meal on overtime, but he conceded on cross-examination that he never specifically stated to the command, "Don't take a meal on overtime."

The Respondents and their two witnesses explained that the workload in Queens Vice is such that detectives assigned to the command generally take meal whenever they find the time and that meal breaks are often brief. According to the Respondents, they did not get the chance to eat during their regularly assigned tour on December 29, 2004. They were then assigned to work overtime for the purpose of transporting prisoners to Central Booking. The Respondents credibly testified that their stop at Kelly's on the way back from Central Booking was their first opportunity to eat all day. Because it is incomprehensible how the Respondents stopping at Kelly's to grab a bite to eat at the end of a busy, 12-hour workday can in any way be considered conduct prejudicial to the good order, efficiency and discipline of the Department, I find the Respondents Not Guilty of Specification No. 1.

Specification No. 2

The Respondents stand charged with causing false entries to be made in Department records in order to conceal the fact that they had patronized a licensed premise while on overtime without authorization. The Respondents entered 1:00 a.m. sign-out times on the Roll Call on December 29, 2004, but Ameri testified that those Roll Call entries could not possibly be accurate since the Respondents did not leave Kelly's until 1:26 a.m. According to Ameri, the Respondents did not actually sign out until approximately 2:45 a.m. The Respondents, in contrast, testified that they left Kelly's at 12:55 a.m. and immediately signed out on the Roll Call upon their return to the command.

The Court believes the testimony provided by the Respondents since, as discussed above, they did not engage in misconduct by eating at Kelly's while on overtime and,

therefore, had nothing to conceal. The discrepancy concerning the timing of the Respondents' actions can be explained by the fact that Ameri neither physically observed the Respondents sign out nor took any notes on the incident until months later. Moreover, Ameri even conceded that he was not too focused on the timing of his whereabouts that day.

Accordingly, I find the Respondents Not Guilty of Specification No. 2.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

